

Remarks

Reconsideration of this Application is respectfully requested. Upon entry of the foregoing amendments, Claims 1-28 are pending in the application, with Claims 1 and 26 being the independent claims. Claim 1 has been amended. In claim 1, line 12, "said scoreline positioned" has been changed to --said at least one scoreline positioned-- for proper antecedent. In claim 1, line 12, "end" has been changed to --tip-- for proper antecedent support.

Support for the subject matter of the amended claims is contained in the application as originally filed. Because the foregoing changes introduce no new matter, their entry is respectfully requested. Applicant submits the foregoing amendments do not raise new issues and present the rejected claims in better form for consideration on appeal.

Based on the above Amendment and the following Remarks, Applicant respectfully requests that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

Reissue Applications

A declaration as to loss of inaccessibility of the original patent, is submitted herewith.

Rejections under 35 U.S.C. § 251

Claims 1-28 (Supplemental Declaration)

Claims 1-28 are rejected as being based upon a defective supplemental declaration. A Reissue Application Supplemental Declaration made by the inventors is submitted herewith.

Applicant respectfully submits that the rejection of Claims 1-28 under 35 U.S.C. § 251 is overcome by the Reissue Application Supplemental Declaration submitted herewith.

Claims 1-28 (New Matter)

The Examiner has rejected Claims 1-28 under 35 U.S.C. §251 as being based upon new matter added to the patent for which reissue is sought. Applicant respectfully appeals the Examiner's position as set forth in Appellants' Appeal Brief submitted herewith.

Information Disclosure Statement

The Examiner has not considered the Information Disclosure Statement ("the IDS") dated March 1, 2001 and received by the USPTO on March 5, 2001. The Examiner refused to consider the IDS since it does not conform to the new requirements of 37 C.F.R. § 1.97(e). Applicants respectfully submit that the any deficiency of the IDS was inadvertent. In conformance with the new requirements of 37 C.F.R. § 1.97(e), the undersigned hereby states that each item of information contained in the IDS was cited in *any* communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of the IDS.

Should the Examiner decide not to consider the information referred to by the IDS, Applicants respectfully submit that the only cited document, that is, U.S. Patent No. 5,662,231 ("the '231 patent") should already have been considered by the Examiner. The present application is a continuation-in-part of U.S. Patent Application No. 08/436,936, filed May 8, 1995, which issued as the '231 patent. Accordingly, the Examiner should have considered the '231 patent in accordance with M.P.E.P. § 609(I)(A)(2) which states:

[t]he examiner will consider information which has been considered by the Office in a parent application when examining...a continuation-in-part application filed under 37 CFR 1.53(b). Such information need not be resubmitted in the continuing application unless the applicant desires the information to be printed on the patent.

As the '231 patent is the parent of the present continuation-in-part application, Applicant respectfully submits that the Examiner should have considered the '231 patent and it need not be resubmitted.

Rejections under 35 U.S.C. § 112***Claims 1-28***

The Examiner has rejected Claims 1-28 under 35 U.S.C. §112, first paragraph as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. Applicant respectfully appeals the Examiner's position as set forth in Appellants' Appeal Brief submitted herewith.

Claims 1-25

The Examiner has rejected Claims 1-25 under 35 U.S.C. §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter for which applicant regards as the invention.

Applicant respectfully submits that the rejection of Claim 1, insofar as the "said score line" is concerned, is overcome by the accompanying amendment thereto.

Applicant respectfully appeals the Examiner's position with regard to Claims 1-25 with respect to the Examiner's position that Applicant has failed to sufficiently claim the structure of the central well of the cap such that only a probe with a blunt tip will engage the bottom at the center thereof, as set forth in Appellants' Appeal Brief submitted herewith.

Claims 1-26

The Examiner has rejected Claims 1-26 under 35 U.S.C. §112, second paragraph as failing to set forth the subject matter which applicants regard as their invention. Applicant respectfully appeals the Examiner's position as set forth in Appellants' Appeal Brief submitted herewith.

Rejections under 35 U.S.C. § 102***Claims 1, 2, 5, 9, 15 and 16***

The Examiner has rejected Claims 1, 2, 5, 9, 15 and 16 under 35 U.S.C. § 102 as being anticipated by U.S. Patent No. 4,022,258 to Steidley *et al.* ("the Steidley patent"). Applicant respectfully appeals the Examiner's position as set forth in Appellant's Appeal Brief submitted herewith.

Double Patenting

The Examiner has rejected Claims 1, 3-14, 19 and 20 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-12 of U.S. Patent No. 5,513,763 to Adams *et al.* ("the Adams patent") in view of U.S. Patent No. 4,173,858 to Cassia ("the Cassia patent"). Applicants respectfully disagree with the Examiner as neither the Adams or the Cassia patent discloses a scoreline positioned on the bottom of a well which is split by a blunt tip engaging the bottom of the well at a center thereof.

The Adams patent discloses a removable plug 51 and thus renders a scoreline unnecessary. The Cassia patent discloses a plug 160 including a closure wall 170 which is opened as sharp point 139 of piercing member 130 enters annular recess 171 and pierces or cuts through a thin bridge portion 172. *See* the Cassia patent, column 6, line 59 through column 7, line 15. Thus, neither the Adams patent nor the Cassia patent discloses, teaches or even suggests a scoreline positioned on the bottom of a well which is split by a blunt tip engaging the bottom of the well at a center thereof.

In order to expedite prosecution and to reduce the number of issues on appeal, Applicants submit herewith a terminal disclaimer to obviate a double patenting rejection in compliance with 37 CFR § 1.321(c) including a certificate under 37 CFR § 3.73(b) disclaiming the terminal part of any patent granted on the above-captioned application which would extend beyond the term of the Adams patent. Applicants respectfully submit that the Examiner's nonstatutory double patenting rejection is overcome by the Terminal Disclaimer submitted herewith.

PATENT

RI-61182/RBC/VEJ
Application No. 09/375,164
Filed: August 16, 1999
Art Unit: 3727

Conclusion

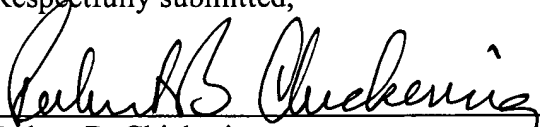
All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicant believes that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, the personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided below.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extension of time or additional claims, and/or credit any overpayment to Deposit Account No. 06-1300 (Order No. RI-61182/RBC/VEJ).

Prompt and favorable consideration of this Amendment and Response is respectfully requested.

Date: 4/1/02

Respectfully submitted,


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